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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 IN RE CAPACITORS ANTITRUST  
15 LITIGATION

Master File No. 3:14-cv-03264-JD

16 THIS DOCUMENT RELATES TO  
17 ALL ACTIONS  
18

**STIPULATION AND [PROPOSED]  
ORDER CONCERNING EXPERT  
DISCOVERY**

19 The parties through their respective counsel of record stipulate to the following regarding the  
20 scope of expert discovery in the above-captioned matters and all other matters subsequently  
21 consolidated with them (collectively, the “Actions”), subject to approval by the Court as required by  
22 the Standing Order for Discovery in Civil Cases before Judge Donato.

23 1. This Stipulation and Order Concerning Testifying Expert Discovery (“Stipulation”) does not set or alter the time for any disclosure required by Federal Rule of Civil Procedure 26(a)(2)(B)  
24 or the timing of any deposition of any testifying expert. The parties contemplate that they will later  
25 submit a stipulation addressing these matters for approval by the Court or the Court will establish a  
26 timetable for disclosures and depositions.  
27  
28

2. To the extent that this Stipulation imposes limitations on discovery that would otherwise be available under the Federal Rules of Civil Procedure or this Court’s standing orders, the parties have agreed to those limitations to increase the efficiency of their dealings with testifying experts and to minimize discovery disputes regarding testifying experts. Neither the terms of this Stipulation nor the parties’ agreement to them shall be considered an admission by any person that any of the information restricted from discovery by this Stipulation would otherwise be discoverable or admissible.

3. For purposes of the Actions, Rule 26(a)(2)(B)(ii) is modified to read: “the facts, data and other information relied on by the witness in forming them.”

4. Except as provided in paragraphs 5 and 6 below, the following types of information shall *not* be the subject of any form of discovery and the parties shall not be obligated to preserve such information in any form or include such information on any privilege log:

a. the content of communications among and between:

- i. counsel and the expert and/or the expert’s staff and/or supporting firms;
- ii. counsel and any non-testifying expert consultant and/or the consultant’s staff;
- iii. the expert and other experts and/or other non-testifying expert consultants;
- iv. experts and their staff and/or supporting firms;
- v. non-testifying expert consultants and their staffs;
- vi. the respective staffs and/or supporting firms of experts or non-testifying expert consultants and the staffs and/or supporting firms of other experts or non-testifying expert consultants.

b. notes, drafts, written communications, preliminary or intermediate calculations, computations or other data runs, or other types of preliminary work created by, for, or at the direction of a testifying expert.

5. No party or their experts are obligated to preserve or produce budgets, invoices, bills, receipts or time records concerning testifying or non-testifying expert witnesses or consultants, their

1 staff, assistants, colleagues, or associates, or their companies or organizations.

2 6. The limitations contained in paragraphs 4 and 5 above shall not apply to any  
3 communications, documents, data sets, data runs, calculations, computations or other forms of  
4 information or work upon which a testifying expert relies as a basis for any of his or her opinions or  
5 reports.

6 7. Notwithstanding the limitations contained in paragraphs 4 and 5 above, an expert may be  
7 asked: (a) to identify and generally describe investigations or modeling (including any regression  
8 analyses) that the expert attempted but rejected, (b) to describe the reasons for rejecting any such  
9 investigations or modeling, (c) to respond to reasonable questions regarding the hourly rates of the  
10 expert and his or her staff, the amount of time an expert or that expert's staff has spent on the expert's  
11 report and associated work, and the amount of money billed for the report and associated work.

12 8. Within three business days of any party serving any expert report and/or expert  
13 declaration pursuant to Fed. R. Civ. P. 26(a)(2)(B) or otherwise, the party or parties proffering the  
14 expert witness shall produce: the data or other information relied upon by the expert witness in forming  
15 the expert witness's opinions; any exhibits that will be used to summarize or support the expert  
16 witness's opinions; any work product (including but not limited to, analyses, spreadsheets, graphs, and  
17 charts) relied upon by the expert witness that is based on the output from any computer programs that  
18 are produced; the expert witness's qualifications, including a list of all publications authored in the  
19 previous 10 years; a list of all other cases in which, during the previous four years, the expert witness  
20 has testified as an expert at trial or by deposition; and a statement of the hourly rate to be paid for the  
21 expert witness's time in the case. "Data or other information relied upon" shall be deemed to include,  
22 but will not be limited to, underlying data, spreadsheets, computerized regression analysis and/or other  
23 underlying reports and schedules sufficient to reconstruct the work, calculations, and/or analyses upon  
24 which the expert witness is relying for his or her opinions.

25 9. The information required by paragraph 8 above to be produced shall be produced  
26 electronically (via email, disc or FTP site) where feasible. Data, statistical analyses, or other  
27 information (including any calculation or exhibit) upon which an expert relies for any of his or her  
28 opinion(s) in this matter shall be provided in machine readable format, including any data that has been

1 cleaned, reformatted, or modified in any way from the form in which it may have been provided to the  
2 expert. All other documents, data, and other information relied upon shall be provided in a format as  
3 agreed to by the parties, along with any software and instructions required to read them, but no party  
4 need produce computer software that is reasonably and commercially available (*e.g.*, Microsoft Word,  
5 Excel). Documents that are publicly available need not be produced absent specific request if they are  
6 identified with sufficient specificity to allow the opposing side to locate and obtain the document.  
7 Documents that have previously been produced during discovery need not be produced if they are  
8 identified by Bates number.

9 10. Paragraph 8 above is not intended to limit the ability of any party to prepare and use  
10 demonstrative exhibits, including demonstrative exhibits that may relate to an expert's testimony,  
11 during the course of any hearing or trial. The admissibility of any such demonstrative exhibits shall be  
12 subject to the Federal Rules of Evidence, the Rules of Civil Procedure, and this Court's Local Rules,  
13 unless otherwise provided by order of the Court.

14 11. No subpoenas (for depositions or documents) need be served on any testifying expert  
15 from whom a report or declaration is provided. Instead, the party proffering such expert will (a) be  
16 responsible for producing all materials and information relied on by the expert, and (b) make the expert  
17 available for deposition at a time mutually agreed to by the parties and consistent with the Court's  
18 scheduling orders.

19 12. Nothing in this Stipulation shall permit a party or a testifying expert to withhold any  
20 proposition, fact, belief or other data, information or material on which the expert relies in support of  
21 her or his opinion(s) in this matter.

22 13. The parties agree to comply with this Stipulation pending the Court's approval.

23 Dated: January 29, 2015

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25 Pursuant to Civ. L. R. 5-1(e)(3), I attest that concurrence in the filing of this document has been  
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27 Dated: January 29, 2015

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IT IS SO ORDERED:

Dated: \_\_\_\_\_

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JAMES DONATO  
UNITED STATES DISTRICT JUDGE